

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

IN RE: JOHNSON & JOHNSON  
TALCUM POWDER PRODUCTS  
MARKETING, SALES PRACTICES,  
AND PRODUCTS LIABILITY  
LITIGATION

**MDL No. 3:16-md-2738-MAS-LHG**

JUDGE MICHAEL A. SHIPP  
MAG. JUDGE LOIS H. GOODMAN

THIS DOCUMENT RELATES TO:

Civil Case No. 3:20-cv-11712-MAS-LHG

**SHIRLEY BARTSCHI** v. JOHNSON &  
JOHNSON, et al.

**MOTION TO SUBSTITUTE PARTY-PLAINTIFF UNDER RULE 25(a)(1)**

Counsel for plaintiff, Shirley Bartschi, respectfully move this Court to substitute Kimberly Johanatha Toti Petersen and Derek Jason Floyd Toti, the daughter and son of, and co-successors-in-interest for, plaintiff Shirley Bartschi, now deceased, in order to continue the matter as a survival action and to allege claims for wrongful death pursuant to Rule 25 of the Federal Rules of Civil Procedure.

1. Plaintiff Shirley Bartschi, now deceased, commenced this action on August 27, 2020. (Dkt. 1.)

2. Shirley Bartschi died on May 1, 2021, due to injuries caused by the negligent acts and omissions alleged in her Short Form Complaint filed in the instant MDL. (Dkt. 1.) A redacted copy of Ms. Bartschi's Death Certificate is attached hereto as *Exhibit A*.

3. A Notice of Suggestion of Death was filed with this Court on August 21, 2023. (MDL 2738 Dkt. 26783.)

4. Shirley Bartschi is survived by her two adult children, Kimberly Johanatha Toti Petersen and Derek Jason Floyd Toti.

5. Declarations executed by co-successors-in-interest Kimberly Johanatha Toti Petersen and Derek Jason Floyd Toti are attached hereto as *Exhibits B* and *C*, respectively, pursuant to California Code of Civil Procedure section 377.32.

6. The claims made by Shirley Bartschi against Defendants herein survive her death. Cal. Code Civ. Proc. § 377.20 (a); Fed. R. Civ. P. 25(a)(1). Under California and federal law, the claims against the Defendants may be instituted as if the deceased person were still alive. Id.

7. Additionally, Shirley Bartschi's surviving children, Kimberly Johanatha Toti Petersen and Derek Jason Floyd Toti have the capacity to pursue individual claims as wrongful death beneficiaries.

8. It is respectfully requested that this Court enter an Order substituting Kimberly Johanatha Toti Petersen and Derek Jason Floyd Toti as co-successors-in-interest for deceased plaintiff, Shirley Bartschi, and wrongful-death

claimants to allege claims for wrongful death. A proposed Order is attached hereto as *Exhibit D*.

Dated: August 28, 2023

Respectfully submitted,

/s / Clarissa E. Kearns

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on August 28, 2023, this document was filed and electronically served by way of the CM/ECF filing system. Notice of this filing will be served on all parties of record by operation of the ECF system and parties may access the filing through the ECF system.

/s / Clarissa E. Kearns

Clarissa E. Kearns